

<p style="text-align: right;">Page 198</p> <p>1 RRO/38. Do you see that on Exhibit No. 17?</p> <p>2 A Yes.</p> <p>3 Q And then if you look back on Exhibit</p> <p>4 No. 16, on the right-hand corner of that document</p> <p>5 from the Department of the Army, U.S. Corps of</p> <p>6 Engineers, it cites RRO/38. Do you see that?</p> <p>7 A Yes.</p> <p>8 Q Now, Exhibit 17 appears to be a</p> <p>9 response letter to Exhibit No. 16.</p> <p>10 Do you disagree with that?</p> <p>11 A I can't disagree with it. It's a valid</p> <p>12 assumption.</p> <p>13 Q Okay. Now, if you look at Exhibit No.</p> <p>14 17, and this is Nugget's response to the U.S.</p> <p>15 Corps of Engineers, the first paragraph says,</p> <p>16 "Please be advised that Spencer Rock Products,</p> <p>17 our supplier of rock on the project, is not a</p> <p>18 subcontractor to Nugget Construction. Their</p> <p>19 relationship to Nugget Construction is that of a</p> <p>20 vendor."</p> <p>21 Do you see that, Mr. Bentz?</p> <p>22 A I see what it says.</p> <p>23 Q Okay. To your understanding and to</p> <p>24 North Star's understanding, was Spencer Rock</p> <p>25 Products a supplier on this project?</p>	<p style="text-align: right;">Page 200</p> <p>1 A August 25th, 1997. By then we realized</p> <p>2 that it wasn't Spencer we were actually even</p> <p>3 working for; it was actually Nugget.</p> <p>4 Q But I was asking you your understanding</p> <p>5 or North Star's understanding of the role that</p> <p>6 Spencer Rock played.</p> <p>7 A In August of 1997 that's -- I gave you</p> <p>8 the answer.</p> <p>9 Q Which is? You're being ambiguous, sir.</p> <p>10 A By that time we realized it was</p> <p>11 actually Nugget that we had actually been doing</p> <p>12 the work for.</p> <p>13 Q But what I'm asking you, sir, is if</p> <p>14 North Star's position is that Spencer Rock was a</p> <p>15 supplier of rock on the project. I'm not asking</p> <p>16 you otherwise.</p> <p>17 MR. SEWRIGHT: Objection, Counsel, to</p> <p>18 the form of the question. You're switching</p> <p>19 gears.</p> <p>20 MS. HO: I'm not switching gears here.</p> <p>21 A Pick a time frame. In January of '97?</p> <p>22 We probably figured that Spencer was a supplier</p> <p>23 and that we were working for them.</p> <p>24 BY MS. HO:</p> <p>25 Q Okay. February, 1997 they were a</p>
<p style="text-align: right;">Page 199</p> <p>1 MR. SEWRIGHT: Object to the form of</p> <p>2 the question; including calls for a legal</p> <p>3 conclusion.</p> <p>4 MS. HO: Objection noted.</p> <p>5 Q Mr. Bentz, I'm asking you for your</p> <p>6 knowledge of the factual basis.</p> <p>7 A August 25th? From everything I've</p> <p>8 read, they weren't doing anything at that</p> <p>9 juncture. Nugget was doing everything.</p> <p>10 Q Mr. Bentz, I'm just asking you for your</p> <p>11 understanding of North Star's role.</p> <p>12 A Restate the question.</p> <p>13 Q Okay. What is North Star's position as</p> <p>14 to the role that Spencer Rock Products had on the</p> <p>15 Homer Spit project?</p> <p>16 A That's not what you asked just a minute</p> <p>17 ago. Related to this document?</p> <p>18 Q This is ancillary to this document.</p> <p>19 A Okay. So it's a separate question?</p> <p>20 Q Separate question.</p> <p>21 A Ask the question again.</p> <p>22 Q Would you repeat that, please?</p> <p>23 (Question was read by the reporter.)</p> <p>24 A What date? Give me a specific date.</p> <p>25 Q August 25th, 1997.</p>	<p style="text-align: right;">Page 201</p> <p>1 supplier -- strike that.</p> <p>2 January, 1997, North Star's position</p> <p>3 was that Spencer Rock was a supplier?</p> <p>4 MR. SEWRIGHT: Objection; form of the</p> <p>5 question.</p> <p>6 MS. HO: Objection noted.</p> <p>7 Q Please answer the question.</p> <p>8 A January of 1997 we were under the</p> <p>9 assumption that Spencer was going to be mining</p> <p>10 rock in a quarry for a job that was going to be</p> <p>11 to protect the Homer Spit, a riprap type job.</p> <p>12 Q Any time after that did North Star's</p> <p>13 understanding of Spencer Rock Products change?</p> <p>14 What made North Star believe otherwise?</p> <p>15 MR. SEWRIGHT: Objection to the form of</p> <p>16 the question.</p> <p>17 BY MS. HO:</p> <p>18 Q Mr. Bentz, let me rephrase that.</p> <p>19 In February of 1997 what was North</p> <p>20 Star's position as to Spencer Rock's role in the</p> <p>21 project?</p> <p>22 MR. SEWRIGHT: Objection to form.</p> <p>23 BY MS. HO:</p> <p>24 Q Please answer the question. Objection</p> <p>25 noted.</p>

<p style="text-align: right;">Page 202</p> <p>1 A In February of 1997 what?</p> <p>2 Q Same question.</p> <p>3 A Ask it again.</p> <p>4 Q Okay. In February of 1997 what was</p> <p>5 North Star's position as to Spencer Rock</p> <p>6 Products' role in the Homer Spit project?</p> <p>7 A We thought in February of 1997 that</p> <p>8 Spencer Rock was going to be mining rock for the</p> <p>9 Homer Spit project and that we would be loading</p> <p>10 rock onto a Nugget rock barge.</p> <p>11 Q Is that the same position of North Star</p> <p>12 for the time period of March, 1997 as to Spencer</p> <p>13 Rock's role in the Homer Spit project?</p> <p>14 MR. SEWRIGHT: Objection, Counsel, form</p> <p>15 of the question; calling for speculation.</p> <p>16 MS. HO: It's not calling for</p> <p>17 speculation.</p> <p>18 MR. SEWRIGHT: You're assuming that</p> <p>19 North Star even thought about it in March of</p> <p>20 1997.</p> <p>21 A The real answer to your question, I</p> <p>22 think, is there's a progression of things that</p> <p>23 took place that changed our belief in thinking as</p> <p>24 to what was actually going on with the job. I</p> <p>25 can't be specific to the actual dates that each</p>	<p style="text-align: right;">Page 204</p> <p>1 A Was that a question?</p> <p>2 Q Yeah.</p> <p>3 A Can you restate that, please?</p> <p>4 (Question was read by the reporter.)</p> <p>5 MR. SEWRIGHT: Object; there's no</p> <p>6 question there.</p> <p>7 BY MS. HO:</p> <p>8 Q Let me rephrase that. In North Star's</p> <p>9 view and its belief, Nugget eventually allegedly</p> <p>10 took over the operations. Is there a specific</p> <p>11 instance that you know of or North Star knows of</p> <p>12 that would have led you to believe this?</p> <p>13 A In reviewing the documents it's fairly</p> <p>14 apparent to me that there was a switch that took</p> <p>15 place, and obviously there was a switch that took</p> <p>16 place in our minds as well based on the fact of</p> <p>17 what we had to do to try to get collected.</p> <p>18 Q But at what point, though?</p> <p>19 A I can't give you the exact -- pinpoint</p> <p>20 the exact date, from my recollection. So I have</p> <p>21 to do like everybody else on this case has to do;</p> <p>22 I have to review the materials that I have</p> <p>23 presented in front of me.</p> <p>24 Q Now, would North Star's position have</p> <p>25 been effectuated with Mr. Jack Goodwill's</p>
<p style="text-align: right;">Page 203</p> <p>1 of the thought processes were changing, but it's</p> <p>2 fairly well documented through all of the</p> <p>3 discovery, I believe.</p> <p>4 BY MS. HO:</p> <p>5 Q Mr. Bentz, to the extent that you can</p> <p>6 pinpoint any particular circumstance or event</p> <p>7 that had changed North Star's view that Nugget</p> <p>8 then became --</p> <p>9 A I can't recall the exact dates that</p> <p>10 took place in 1997, but by being able to review</p> <p>11 the documentation you can see the shift. At</p> <p>12 least it's apparent to me that there was a shift</p> <p>13 in the thinking.</p> <p>14 Q But to your knowledge and North Star's</p> <p>15 knowledge, did Nugget Construction ever have a</p> <p>16 direct written contract with North Star on this</p> <p>17 Homer Spit project?</p> <p>18 MR. SEWRIGHT: Objection; form of the</p> <p>19 question; calls for a legal conclusion.</p> <p>20 MS. HO: Objection noted.</p> <p>21 Q I'm just asking Mr. Bentz for the</p> <p>22 factual allegations that he knows of and North</p> <p>23 Star knows of that would substantiate this</p> <p>24 progression of circumstances you were just</p> <p>25 referring to in your previous answer.</p>	<p style="text-align: right;">Page 205</p> <p>1 communications allegedly with Mr. Randolph at the</p> <p>2 first barge loading?</p> <p>3 MR. SEWRIGHT: Object to the form of</p> <p>4 the question. Effectuated?</p> <p>5 MS. HO: North Star's position that it</p> <p>6 believed that Nugget Construction had taken over</p> <p>7 the operations.</p> <p>8 MR. SEWRIGHT: Objection to the form of</p> <p>9 the nonquestion.</p> <p>10 MS. HO: Objection noted.</p> <p>11 Q Mr. Bentz, please answer the question.</p> <p>12 A I believe that Jack Goodwill's</p> <p>13 affidavit, if you want to look at that document,</p> <p>14 spells out who he was taking direction from and</p> <p>15 that sort of thing.</p> <p>16 Q Now, Mr. Bentz, to your knowledge and</p> <p>17 to North Star's knowledge, when was it that</p> <p>18 Nugget stopped paying Spencer Rock Products? Do</p> <p>19 you have any recollection or knowledge of that</p> <p>20 particular instance?</p> <p>21 A I have the materials in front of me</p> <p>22 that indicate when that took place.</p> <p>23 Q But you do not from your personal</p> <p>24 knowledge have an answer for that, correct?</p> <p>25 MR. SEWRIGHT: Object to the form.</p>

<p style="text-align: right;">Page 206</p> <p>1 MS. HO: Objection noted.</p> <p>2 Q Please answer.</p> <p>3 A I can't tell you any exact dates.</p> <p>4 Q Would anybody at North Star other than</p> <p>5 yourself know the answer to that question?</p> <p>6 A I don't know if anybody at North Star</p> <p>7 can think back eight years and remember an exact</p> <p>8 date that their thought process changed on a</p> <p>9 particular subject. That's why we're all</p> <p>10 reflecting on all these documents.</p> <p>11 Q My next in question to you is: Do you</p> <p>12 have any knowledge or does North Star have any</p> <p>13 knowledge that the United States Corps of</p> <p>14 Engineers ever communicated to you or North Star</p> <p>15 that it was not satisfied with Nugget's</p> <p>16 performance on the Homer Spit project?</p> <p>17 MR. SEWRIGHT: Object to the form of</p> <p>18 the question.</p> <p>19 A I don't recall having seen a document</p> <p>20 like that.</p> <p>21 BY MS. HO:</p> <p>22 Q Okay. So to your recollection or to</p> <p>23 your knowledge there was no communication, oral</p> <p>24 or written, where the United States Corps of</p> <p>25 Engineers had indicated that Nugget's performance</p>	<p style="text-align: right;">Page 208</p> <p>1 believe, Nugget, that you have taken over the</p> <p>2 work of Spencer and it is your responsibility to</p> <p>3 pay everybody.</p> <p>4 A Yeah. It said something like, you have</p> <p>5 taken over the actual work in the quarry and,</p> <p>6 therefore, you're responsible to the people doing</p> <p>7 the work for you. That's what it said.</p> <p>8 BY MS. HO:</p> <p>9 Q That's a letter that I think I saw too,</p> <p>10 but I don't think it pertains particularly to the</p> <p>11 North Star services.</p> <p>12 A Since you have it in your hand and</p> <p>13 we're talking about it, shouldn't it be marked as</p> <p>14 an exhibit so we can discuss it?</p> <p>15 Q No, this is the same Exhibit No. 16.</p> <p>16 MR. SHAMBUREK: Isn't it RRO/40? It's</p> <p>17 a two-page document. That might make life</p> <p>18 easier. I think you might find it referenced in</p> <p>19 Shoreside's discovery.</p> <p>20 MR. SEWRIGHT: You want us to go off</p> <p>21 the record?</p> <p>22 MR. MACHETANZ: Yeah.</p> <p>23 (Short break taken.)</p> <p>24 BY MS. HO:</p> <p>25 Q Mr. Bentz, are you ready?</p>
<p style="text-align: right;">Page 207</p> <p>1 was deficient on this project?</p> <p>2 A No, that's not true. I believe they</p> <p>3 did indicate that in the response on August the</p> <p>4 21st. In the next to the last paragraph it says,</p> <p>5 "We remind you that under Contract Clause I.55,</p> <p>6 Payments Under Fixed-Price Construction</p> <p>7 Contracts, you are not to request for progress</p> <p>8 payments that which you intend to withhold from a</p> <p>9 subcontractor or supplier."</p> <p>10 And I believe that there's another</p> <p>11 letter that came from the Corps -- if you could</p> <p>12 help me find it -- I don't know if it was a</p> <p>13 response to the August 25th letter from Nugget,</p> <p>14 but there's another Corps letter out there</p> <p>15 somewhere, is there not?</p> <p>16 MR. SEWRIGHT: Oh, there are several.</p> <p>17 BY MS. HO:</p> <p>18 Q If you have it --</p> <p>19 A There's another Corps letter that</p> <p>20 indicates that they were unhappy with the</p> <p>21 performance and that in fact they were not to</p> <p>22 withhold payments from anybody that was</p> <p>23 downstream.</p> <p>24 MR. SEWRIGHT: Counsel, there was one</p> <p>25 letter from the Corps where the Corps said, we</p>	<p style="text-align: right;">Page 209</p> <p>1 A Sure.</p> <p>2 MS. HO: Well, I'm going to end my</p> <p>3 questions now, and I'm opening the floor to any</p> <p>4 one of you who wants to examine and question Mr.</p> <p>5 Bentz.</p> <p>6 EXAMINATION</p> <p>7 BY MR. VIERGUTZ:</p> <p>8 Q Good afternoon.</p> <p>9 A Good afternoon.</p> <p>10 Q I don't want any legal conclusions. I</p> <p>11 just want your understanding, your own personal</p> <p>12 understanding as a layman. If I sue you in</p> <p>13 business -- you're a businessman. If I sue you,</p> <p>14 do you have a right to go to trial, or do you</p> <p>15 have to settle that case?</p> <p>16 A I have a right to go to trial.</p> <p>17 Q And have you ever spoken to anyone at</p> <p>18 USF&G?</p> <p>19 A On this matter?</p> <p>20 Q Yes.</p> <p>21 A Not that I can recall.</p> <p>22 Q Do you know whether anyone at North</p> <p>23 Star ever has?</p> <p>24 A I do not know.</p> <p>25 Q Would it be the normal course of</p>

<p style="text-align: right;">Page 210</p> <p>1 business that you would make such a contact, or 2 could anyone do that? 3 A It could be any number of maybe three 4 different individuals that can -- well, my 5 controller could have made a call like that, 6 since he was involved with things like 7 collections and insurance and things of that 8 nature. 9 It could have been Jack Goodwill since 10 it was his job. Could have been Scott Francis, 11 who was vice president. Those are the only 12 individuals I can think of, but in the normal 13 course, something like that, it would probably be 14 me as you have stated. 15 Q Who is your controller? 16 A Steve Brazier at the time. 17 Q B-r-a-s-i-e-r? 18 A Z-i-e-r, I believe. 19 Q In reviewing your files, did you see 20 any communication written between you and USF&G? 21 A Not that I recall. 22 Q Okay. If you'd look at Exhibit 5, 23 please, paragraph 38. If you'd read that 24 paragraph and be so kind as to tell me when 25 you've completed that.</p>	<p style="text-align: right;">Page 212</p> <p>1 that's led to us being here today. USF&G, to the 2 best of my knowledge, never stepped up and did 3 anything, and I believe that that was negligent 4 because they were bonding the job. 5 Q Do you know the difference between 6 negligence and bad faith? 7 A Depending on the circumstance, yeah. 8 MR. SEWRIGHT: Are you calling for a 9 legal conclusion now? 10 MR. VIERGUTZ: No, just his 11 understanding. 12 Q What is that understanding in this 13 circumstance? 14 A What do you mean? 15 Q The difference between negligence and 16 bad faith. 17 A I think they're kind of similar on this 18 particular circumstance, in my own mind. I mean, 19 I'm not a lawyer so I don't write legal language, 20 and I know that things can be interpreted 21 different depending on the words you use. But 22 USF&G's failure in this particular case, in my 23 opinion, was the fact that they did nothing. 24 They didn't step in to either settle it. They 25 didn't step in to put pressure, at least in my</p>
<p style="text-align: right;">Page 211</p> <p>1 A I've read it. What was your question? 2 Q I haven't asked you yet, but I will. 3 A Okay. 4 Q What is your understanding of bad faith 5 nonpayment? 6 A Depends on the circumstance. 7 Q In this circumstance. 8 A What's meant by this? 9 Q Yes. 10 A From a layman's terms, from me? 11 Q Yeah. 12 A I believe that USF&G was probably 13 fairly aware that there was a problem with their 14 customer at the time that they were bonding 15 Nugget because of the various correspondence that 16 was going on, and they did absolutely nothing and 17 I believe that was negligent. 18 Q What is the problem with their 19 customer? 20 A I'm sorry? 21 Q You said there was a problem with their 22 customer. 23 A Oh, it was obvious that something had 24 gone wrong with this project in order for their 25 to be special agents and all this stuff going on</p>	<p style="text-align: right;">Page 213</p> <p>1 perspective from what I've seen, put pressure on 2 their client to get squared up with their 3 customers or their vendors or whatever you want 4 to call a person that's, you know, owed money. 5 Q And that's based entirely on lack of 6 documents that you've seen? 7 A I've got nothing to show me that USF&G 8 stepped up and said, hey, Nugget, you need to do 9 something about this; this is a problem. 10 Q Why do you believe they should have 11 done something? 12 A Can I use an example? 13 Q Sure. 14 A Let's say that I'm handling a million 15 dollar transformer and something goes wrong and I 16 drop it. I have an insurance company. My 17 insurance company, I've got to look to them for 18 direction. They would direct me, hey, you know, 19 you've got a lot of things going against you 20 here. It's a bad sling; you used a bad sling and 21 it broke. I don't think you should fight this; I 22 think you better settle it. We better settle it 23 because it's going to be cheaper than if we take 24 it to the fourth quarter. 25 I don't see anything in this case where</p>

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1 USF&G did that. I would expect my bonding
2 company to give me good advice in that respect.
3 I would expect my insurance company in my example
4 to settle a case like that.
5 Q Sure. How do you know that didn't
6 occur?
7 A I have no knowledge whether it did or
8 did not, but there's nothing to show that it did
9 occur.
10 Q And nothing to show it didn't, wouldn't
11 that be correct, that you've read?
12 A I don't know. Just the lack of seeing
13 anything that would indicate that there was a
14 push -- right up to the point in time when we got
15 a settlement, which I believe was a joint
16 settlement offer, after all this crap has gone on
17 here just recently. I think we were offered
18 \$20,000. Bad faith in my opinion.
19 Q But you have no piece of paper to show
20 me in your records --
21 A I don't know whether the \$20,000 offer
22 that came as a joint settlement offer from Nugget
23 and USF&G is in writing or if it was only oral or
24 verbal, so I don't know.
25 Q But you don't know if USF&G told this

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1 person, pay a million dollars and pay it now?
2 A No.
3 MR. SEWRIGHT: For the record, you're
4 referring to Mr. Smithson?
5 MR. VIERGUTZ: Yes.
6 A I do not know that, you're correct.
7 BY MR. VIERGUTZ:
8 Q Could go either way, couldn't it?
9 Could have happened; could not have happened?
10 MR. SEWRIGHT: Object to the form of
11 the question.
12 A Right. I have not seen any
13 documentation. I would presume in a case that's
14 of this potential magnitude where you've got
15 several people claiming that they've been injured
16 financially, there would be something in writing
17 back and forth between the two of you that would
18 indicate such, and that that would have come out
19 in the discovery process somehow or another where
20 we would have seen USF&G in fact was pushing
21 their client to settle it.
22 BY MR. VIERGUTZ:
23 Q Why should they push their client to
24 settle it?
25 A Depends. Could depend on a number of

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1 factors.
2 Q What?
3 A Financial wherewithal of their client
4 to pay the claim or they're going to feel like
5 it's going to come back on their nickel,
6 relationship with the client, the amount of
7 bonding you do for people like the Corps of
8 Engineers. The Corps doesn't like stuff coming
9 back on them.
10 There's a whole series of factors that
11 are business decisions that a prudent business
12 person would make that would lead to any number
13 of various possibilities to answer your question.
14 Q Could one possibility be that they
15 believe that you're wrong and Nugget's right?
16 A Do you really want me to answer that
17 question?
18 Q Yes.
19 A I don't believe you believe that.
20 How's that for an answer?
21 Q It's not an answer.
22 MR. SEWRIGHT: It is an answer.
23 A It's an answer. I don't believe that
24 you believe that.
25 BY MR. VIERGUTZ:

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1 Q I want a yes or no.
2 A Ask the question again.
3 Q Could one of the possibilities be that
4 USF&G believes that you're wrong and Nugget's
5 right?
6 A It could be a possibility.
7 Q Okay. Then we go to nonsettlement.
8 What do you mean -- what's your understanding of
9 that?
10 A I'm sorry. What paragraph is that?
11 Q Same paragraph. It's just the word
12 after nonpayment.
13 MR. SEWRIGHT: Object to the form of
14 the question, if that is a question.
15 A Which part of it?
16 BY MR. VIERGUTZ:
17 Q Nonsettlement, just that word; what
18 does that mean to you?
19 A We haven't got paid. We haven't got
20 squat.
21 Q And is it correct that USF&G does not
22 have to settle the case just like you don't have
23 to settle it if you choose not to; isn't that
24 correct?
25 A We can take it all the way.

Page 218

1

Q

You bet. Why can't they?

2

A

They can.

3

Q

Why is it bad faith if they make that

4

choice?

5

MR. SEWRIGHT:

Object to the form.

6

A

I guess it depends how much knowledge

7

they have about the case. Early on in this case,

8

real early on, if I was USF&G, I might believe

9

what you just suggested might be one of the

10

possibilities, but I don't believe USF&G believes

11

that today.

12

BY MR. VIERGUTZ:

13

Q

And then it says, "and/or refusal to

14

discuss settlement."

15

Again, you're a businessman. If you

16

get sued, you don't have to settle; you and I

17

have agreed on that, correct?

18

A

Correct.

19

Q

And so you don't even have to discuss

20

settlement with me if I sue you, do you?

21

MR. SEWRIGHT:

Object to the form.

22

A

Don't have to.

23

MR. SEWRIGHT:

Calls for a legal

24

conclusion.

25

A

I don't have to.

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1

Q

No.

2

MR. VIERGUTZ:

No further questions.

3

Thanks for your time.

4

MR. SHAMBUREK:

I don't have any.

5

MR. SEWRIGHT:

I have no questions.

6

We're done.

7

MS. HO:

Right. Thanks for appearing.

8

(Proceedings concluded at 2:47 p.m.)

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1

WITNESS CERTIFICATE

2

JEFFREY "JEFF" BENTZ

Taken November 21, 2005

3

I hereby certify that I have read the foregoing

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deposition and accept it as true and correct,

5

with the following exceptions:

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PAGE

LINE

CORRECTION

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Date

JEFFREY BENTZ

24

(Use additional paper to note corrections as needed,

25

signing and dating each page.) (LK)

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1

REPORTER'S CERTIFICATE

2

3

I, LESLIE J. KNISLEY, Shorthand Reporter

4

and Notary Public in and for the State of Alaska do

5

hereby certify:

6

That the witness in the foregoing

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proceedings was duly sworn; that the proceedings

8

were then taken before me at the time and place

9

herein set forth; that the testimony and proceedings

10

were reported stenographically by me and later

11

transcribed under my direction by computer

12

transcription; that the foregoing is a true record

13

of the testimony and proceedings taken at that

14

time; that the witness requested signature; and

15

that I am not a party to nor have I any interest in

16

the outcome of the action herein contained.

17

IN WITNESS WHEREOF, I have hereunto

18

subscribed my hand and affixed my seal this 15th

19

day of December, 2005.

20

21

22

LESLIE J. KNISLEY

23

Notary Public for Alaska

24

My Commission Expires: 12/31/06

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